FILED
JUL 5 1978
MICHAEL RODAK, JR., CLERK

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

STATE OF DELAWARE,

Petitioner,

v.

WILLIAM J. PROUSE, III,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF DELAWARE

BRIEF FOR RESPONDENT IN OPPOSITION

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No. 77-1571

STATE OF DELAWARE,

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BRIEF FOR THE RESPONDENT IN OPPOSITION

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of Delaware has recently been reported as follows: State v. Prouse, Del.Supr., 382 A.2d 1359 (1978).

OPPOSITION TO JURISDICTION

The Delaware Supreme Court is not a court of appeals within the meaning of 28 U.S.C. §1254(1) and consequently jurisdiction can not be so invoked. But see, 28 U.S.C. §1257(3). Moreover, Petitioner has failed to raise an issue of federal constitutional dimensions requiring review by this Court. See Respondent's answer to Petitioner's Reasons For Granting the Writ. Argument I, infra.

CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

The constitutional statutory provisions involved are set forth in the Petition except as follows:

Constitution of the State of Delaware, 1897, Article I, §6.

> The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation.

STATEMENT OF THE CASE

On November 30, 1976, Patrolman Anthony Avena of the New Castle County Police Department stopped the motor vehicle operated by Respondent, William J. Prouse, III. The officer was not answering complaints and stopped Respondent in a random manner in order to conduct a license and vehicle registration check. Patrolman Avena had observed no traffic or equipment violations nor indeed any unusual or suspicious activity, criminal or otherwise. This stop was purely discretionary and neither the New Castle County Police Department nor the Attorney General's Office had set standards nor guidelines in this area.

After stopping Respondent's vehicle, Patrolman Avena approached and smelled what he believed to be marijuana. Upon further investigation, the officer observed a cellophane bag protruding from under the seat. The bag was found to contain green plant-like material.

The patrolman then searched the occupants and found marijuana in Respondent's pocket. As a result, Respondent was arrested and subsequently indicted for Possession of a Non-Narcotic Schedule I Substance in violation of 16 Del.C. §4754.

In the Superior Court of the State of Delaware, In and For New Castle County, Respondent moved to suppress the evidence (marijuana) against him asserting that it was obtained as the result of an illegal stop (seizure). After an evidentiary hearing, the Superior Court granted Respondent's motion.

The State of Delaware, Petitioner, appealed to the Supreme Court of the State of Delaware pursuant to 10 Del.C. §9902(b)(c). The Delaware Supreme Court affirmed the Superior Court ruling. State v. Prouse, Del.Supr., 382 A.2d 1359 (1978).

PETITIONER'S REASON FOR GRANTING THE WRIT

I. THIS CASE PRESENTS A NEW AND IMPORTANT QUESTION OF FEDERAL LAW.

Respondent respectfully submits that Petitioner's argument is incorrect. The decision by the Supreme Court of Delaware does not prevent the police from enforcing license and vehicle registration laws. As the record indicates, neither the Police Department nor the Attorney General's Office had set standards, procedures or guidelines in this area. It is thus incredible that the random and discretionary stopping of motorists is "the most effective method for enforcing" such laws. The Delaware Supreme Court spoke to the State's concern and was not persuaded. As the Court noted: "The flaw in the process is that absolute discretion and authority is conferred upon the police to detain whomever they desire for whatever reason on the pretense of a documents check stop." State v. Prouse, Del.Supr., 382 A.2d 1359, 1364 (1978). Moreover, the Delaware Court held: "The issue of the legal validity of systematic, roadblock-type stops of a number of vehicles for license and vehicle registration check is not now before the Court." State v. Prouse, supra at 1362. Thus, the Delaware decision by its terms has only limited application to the instant case.

Respondent questions whether Petitioner's assertion of a new and important question of Federal Law is correct. Respondent submits that the decision of the Delaware Supreme Court rested on independant state, as well as federal constitutional law. In its opinion the Court held:

> The Delaware Constitution Article I, §6 is substantially similar to the Fourth Amendment and a violation of the latter is necessarily a violation of the former. State v. Moore, Del.Super., 187 A.2d 807 (1963). Evidence seized in disregard of these constitutional provisions is inadmissible at the trial of the person whose rights have been violated. Mapp v. Ohio, supra; Schaffer v. State, Del.Supr., 184 A.2d 689 (1962).

State v. Prouse, supra at 1362. Thus, the federal constitutional issue was not a sole basis for this decision. This Court has jurisdiction to review only if the federal question is the sole basis for the decision. Mental Hygiene Dept. of Cal. v. Kirchner, 380 U.S. 194, 85 S.Ct. 871, 13 L.Ed.2d 753 (1965). The Supreme Court of Delaware has found that Article I, §6 of the Delaware Constitution of 1897 was the basic equivalent of the Fourth Amendment. State v. Prouse, supra; State v. Moore, supra. In the case at bar, the Delaware Courts spoke to both the federal and state constitutional questions. Petitioner states: "Because the Delaware Courts felt constrained by the Fourth Amendment, the evidence was suppressed under Mapp v. Ohio, 367 U.S. 643 (1961)." Petition for Writ of Certiorari at 5. However, Petitioner has not supported that naked assertion. As this Court has said:

> This Court is always wary of assuming jurisdiction of a case from a State Court unless it is plain that a Federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case.

Mental Hygiene Dept. of Cal. v. Kirchner, supra at 197, 85 S.Ct. at , 13 L.Ed.2d at 756 (footnote omitted). Petitioner has not made such a showing and consequently this Court is without jurisdiction to hear this case. See also, Henry v. Mississippi, 379 U.S. 443, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965); Jankovich v. Indiana Toll Road Comm., 379 U.S. 487, 85 S.Ct. 493, 13 L.Ed 2d 439 (1965).

Thus, because the decision of the Delaware Supreme Court was not based solely and exclusively on federal constitutional law, this case does not, then, present an important question of federal law such that this Court should grant the Writ of Certiorari.

II. THE DECISION BELOW IS IN CONFLICT WITH OTHER FEDERAL AND STATE COURT DECISIONS

As Petitioner notes, other jurisdictions have reached contrary results when addressing the issue at bar. Indeed the Delaware Supreme Court so recognized. State v. Prouse, supra at 1364. However, Respondent respectfully submits that although a divergence of opinion exists, it is not pervasive enough to require the issuance of a Writ of Certiorari in this case.

III. THE DECISION BELOW IS INCORRECT

Respondent respectfully asserts that the decision in the Delaware Supreme Court is correct. Although this Court has not expressly ruled on the constitutionality of random and discretionary stops by law enforcement agencies to conduct a document check, the decision of the Delaware Supreme Court follows the reasoning of this Court's recent holdings. United States v. Ortiz, 422 U.S. 891, 95 S.Ct. 2585 45 L.Ed.2d 623 (1975); United States v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976). In Brignoni-Ponce, this Court held that before the border patrol can stop a vehicle and investigate, there must be reasonable suspicion that the particular vehicle contains illegal aliens. Likewise, the Delaware Supreme Court in the case at bar held: "We rule that before the government may single out an automobile to stop it, there must exist specific facts justifying the intrusion. Conversely, a random stop in the absence of specific justifying facts is unreasonable and unconstitutional." State v. Prouse, supra at 1364. Admittedly, the constitutional test is reasonableness; however, the random and discretionary stop in this case is unreasonable because of the "inherent arbitrariness of the procedure" Id. As the Delaware Court noted, to adopt anything but a rigid invalidity rule would emasculate the Fourth Amendment guarantees because a more subjective approach would be highly impractical to enforce. Id. In essence then, the Delaware Supreme Court was following this Court's decision in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and its progeny.

As has been noted, the Delaware decision expressly did not reach the issue of the legal validity of systematic, roadblock-type stops of a number of vehicles for license and vehicle registration document checks. State v. Prouse, supra at 1362. Moreover, the interest of the State in enforcing such laws is adequately protected by compliance with the Delaware Supreme Court's decision. Petitioner has failed to establish any special or compelling need in this area of law enforcement. Thus, the Delaware Court has properly balanced the governmental need for such intrusion against the individual's right to be free of such

random governmental intrusions without apparent reason.

Petitioner's assertion that systematic, roadblock-type stops cause greater inconvenience to motorists than do random and discretionary stops is clearly unfounded. Indeed as this Court noted: ". . . the differences between a roving patrol and a check point would be significant in determining the propriety of the stop . . ." United State v. Ortiz, 422 U.S. at 895, 95 S.Ct. at 2588, 45 L.Ed.2d at 628. A motorist is less likely to be frightened and annoyed if he sees a uniform, systematic procedure for detecting such document violations then if he were singled out for no apparent reason. In Ortiz, this Court has recognized that the Fourth Amendment's requirement that searches be reasonable also limits the police use of unnecessarily frightening or offensive methods of investigation. The Delaware decision then provides law enforcement agencies with effective means of enforcing license and vehicle registration laws by the continued availability of Terry type stops and an acceptance of systematic roadblocks. Moreover, this decision also protects the individual's right to be free from unreasonable governmental intrusions by eliminating arbitrary, random and discretionary stops. The balance struck by the Court below comports with the requirements of the Fourth Amendment. Consequently, the decision of the Supreme Court of Delaware is correct.

CONCLUSION

For the foregoing reasons, Respondent respectfully urges that the Petition for Writ of Certiorari should be denied.

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